

AMENDED IN ASSEMBLY MAY 28, 2013  
AMENDED IN ASSEMBLY MARCH 19, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 600**

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**Introduced by Assembly Member Bonta**

February 20, 2013

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An act to amend Section 22928 of the Business and Professions Code, relating to business.

### LEGISLATIVE COUNSEL'S DIGEST

AB 600, as amended, Bonta. Intermodal marine terminals.

Existing law prohibits an intermodal marine equipment provider or marine terminal operator from imposing per diem, detention, or demurrage charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. Existing law also prohibits an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem or certain other charges from the motor carrier's freight bill.

This bill would ~~modify the term "intermodal marine equipment provider" to become "intermodal equipment provider" and would define this new term~~ *recast these provisions to prohibit a party signatory to an interchange agreement involving intermodal marine equipment from unilaterally terminating, suspending, or restricting the equipment interchange rights of any other signatory to the same interchange agreement.* This bill would ~~also~~ modify the circumstances under which an intermodal *marine* equipment provider or an intermodal marine

terminal operator is prohibited from imposing per diem, detention, or demurrage charges, or citations for parking violations. This bill would prohibit an intermodal equipment provider from requiring a motor carrier to return intermodal equipment to a location other than the physical location at which the equipment was received, as specified.

*This bill would specify that an “intermodal marine terminal” does not include a railroad, warehouse, or any other domestic terminal facility that may handle intermodal marine equipment, but where cargo shipped by intermodal marine transport is not transferred to or from ocean-going vessels. The bill would declare that certain of its provisions are not a change in, but are declaratory of, existing law.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22928 of the Business and Professions  
2 Code is amended to read:  
3 22928. (a) The Legislature finds and declares that unilateral  
4 termination, suspension, or restriction of all of the following:  
5 (1) That no party who is a signatory to an interchange  
6 agreement involving intermodal marine equipment shall  
7 unilaterally terminate, suspend, or restrict the equipment  
8 interchange rights of an intermodal motor carrier shall not result  
9 from intermodal terminal actions any other party signatory to the  
10 same interchange agreement, as specified in subdivision (b) this  
11 section.  
12 (2) Nothing in this section shall restrict any parties from  
13 entering into contracts with enforceable contractual and  
14 commercial terms to provide drayage services if the contract is  
15 consistent with Part 2 (commencing with Section 1549) of Division  
16 3 of Civil Code.  
17 (3) If the parties to a contract to provide drayage services are  
18 mutual signatories to an interchange agreement, then the terms  
19 of that agreement are binding except to the extent that they  
20 otherwise conflict with this section, other provisions of law, or  
21 otherwise by agreement of the contracting parties.  
22 (b) An intermodal marine equipment provider or intermodal  
23 marine terminal operator shall not impose per diem, detention, or  
24 demurrage diem or detention charges on an intermodal motor

1 carrier ~~relative~~ *relating* to transactions involving cargo shipped by  
2 intermodal *marine* transport under any of the following  
3 circumstances:

4 (1) When the intermodal marine ~~or~~ terminal truck gate is closed  
5 during posted normal working hours. ~~No per diem, detention, or~~  
6 ~~demurrage charges shall be imposed~~ *hours, including any gate*  
7 *closures that occur* on a weekend or holiday, ~~or~~ during a labor  
8 disruption period, or during any other period involving an act of  
9 ~~God~~ *God*, or any other planned or unplanned action that closes the  
10 truck gate.

11 (2) When the intermodal marine terminal *or intermodal marine*  
12 *equipment provider* decides to divert the return of equipment from  
13 the point at which it was interchanged without 48 hours' electronic  
14 or written notification to the *intermodal* motor carrier having  
15 possession of the equipment.

16 (3) When the intermodal marine terminal is assessed a fine  
17 pursuant to Section 40720 of the Health and Safety Code.

18 (4) When the intermodal equipment is not compliant ~~as required~~  
19 ~~in with~~ Section 34505.9 of the Vehicle Code ~~or the equipment~~  
20 ~~warrants being~~ *is* placed out of service.

21 ~~(5) When a loaded container or the chassis on which it is~~  
22 ~~mounted is not available for pickup when the motor carrier arrives~~  
23 ~~at the intermodal marine terminal.~~

24 ~~(6)~~  
25 (5) When the intermodal marine terminal is too congested to  
26 safely or reasonably accept the ~~container~~ *intermodal marine*  
27 *equipment* and the intermodal marine terminal turns away the  
28 *intermodal* motor carrier.

29 (c) An intermodal *marine* equipment provider shall not take any  
30 of the following actions:

31 (1) Charge back, deduct, or offset per diem *or detention* charges,  
32 maintenance and repair charges, or peak hour pricing from ~~a~~ *an*  
33 *intermodal* motor carrier's freight bill.

34 (2) Unilaterally terminate, suspend, or restrict the equipment  
35 interchange rights of ~~a~~ *an intermodal* motor carrier ~~or driver~~ that  
36 ~~uses~~ *utilizes* the dispute resolution process contained in the Uniform  
37 Intermodal Interchange and Facilities Access Agreement to contest  
38 a charge, fee, or fine, including a charge for maintenance and  
39 repairs imposed by the intermodal marine terminal, while the  
40 dispute resolution process is ongoing or after a challenge ~~by a~~

1 ~~motor carrier is resolved in the motor carrier's favor is resolved,~~  
2 ~~solely on the basis that the dispute resolution process was utilized~~  
3 ~~by the intermodal motor carrier.~~

4 (3) Unilaterally terminate, suspend, or restrict the equipment  
5 interchange rights of ~~a an~~ intermodal motor carrier for late payment  
6 of an undisputed invoice from the intermodal marine terminal,  
7 provided that the payment is no more than 60 days late.

8 ~~(4) Unilaterally terminate, suspend, or restrict the equipment~~  
9 ~~interchange rights of a motor carrier or driver for parking~~  
10 ~~tickets issued~~

11 (d) *Except as otherwise included in a terminal tariff agreement*  
12 *filed with the federal Maritime Commission, an intermodal marine*  
13 *terminal shall not take any of the following actions:*

14 (1) *Require an intermodal motor carrier to pay for any parking*  
15 *violation or to pay for any parking citation issued by the marine*  
16 *terminal unless the tickets remain citation remains unpaid more*  
17 *than 60 days after being the intermodal motor carrier is in actual*  
18 *physical receipt of the driver or motor carrier citation. For the*  
19 *purposes of this subdivision, delivery by certified mail or other*  
20 *recorded delivery service shall constitute evidence that the*  
21 *intermodal motor carrier is in actual physical custody of a parking*  
22 *violation citation. No parking tickets shall be issued by the marine*  
23 *terminal to a driver or*

24 (2) *Issue a parking citation to an intermodal motor carrier for*  
25 *a parking violation if the assigned spot parking space at issue was*  
26 *occupied and the trouble window or terminal administration was*  
27 *unable to immediately provide a place to park, or if the driver was*  
28 *instructed to park the equipment in a different spot by marine*  
29 *terminal personnel or security.*

30 (3) *Issue a parking violation citation more than five business*  
31 *days after the date that the violation occurred.*

32 ~~(5) Willfully attempt to circumvent any provisions of this section~~  
33 ~~or to fail, for any reason other than~~

34 (e) (1) *Other than what is specified in an agreement or the*  
35 *governing port tariff, to a party shall not collect cargo demurrage*  
36 *when unless it is due and payable and when consistent in a manner*  
37 *that is consistent with this section. An*

38 (2) *An intermodal motor carrier shall not be liable for any*  
39 *portion of cargo demurrage when an intermodal container is not*  
40 *picked up during free time, which is the time period before*

demurrage charges are to be applied that is solely for the account of the beneficial owner or the owner's agent.

(3) Except as otherwise agreed to in writing, an intermodal motor carrier shall not be required by a cargo owner, or an owner's agent, to pick up a loaded container that has any outstanding cargo charges, including, but not limited to, demurrage charges.

(4) Commencing January 1, 2015, an intermodal marine terminal shall require that any outstanding cargo charges, including, but not limited to, all cargo demurrage charges, imposed relative to transactions involving intermodal marine cargo be paid electronically by the responsible party, or that party's agent, before a container is released.

(5) If a loaded container is not made available for pickup when an intermodal motor carrier arrives at the intermodal marine terminal, and all current charges have been paid as set forth in paragraph (4), the intermodal marine terminal operator shall not impose any further cargo demurrage charges on the intermodal motor carrier.

~~(6) Require a motor carrier to return intermodal equipment to a location other than the physical location at which the equipment was received, unless the intermodal equipment provider directs, reasonably in advance of the commencement of the chargeable demurrage, the equipment to be returned to a satellite location as governed by a written bilateral agreement between the intermodal equipment provider and the motor carrier. An intermodal equipment provider shall not unilaterally require a motor carrier to return intermodal equipment to a satellite location by notifying a motor carrier through a posting on an Internet Web site, electronic mail, shipping order, or any method of communication not specified in the written bilateral agreement between the intermodal equipment provider and the motor carrier.~~

~~(d)~~

(f) As used in this chapter:

(1) "Per diem," or "detention," or "demurrage" means a charge imposed by an equipment provider or marine terminal operator for late return or pickup of an empty or a loaded intermodal container and chassis.

(2) "Closed" means not open or available to receive equipment. The intermodal marine terminal shall have posted working hours,

1 and “closed” shall mean that the terminal is not open to release or  
2 accept *intermodal marine* equipment during those posted working  
3 hours.

4 (3) “Divert equipment” means the motor carrier has been  
5 directed to return the equipment to a location different from the  
6 location where the equipment was picked up by the motor carrier.

7 ~~(4) “Shall not impose per diem, detention, or demurrage charges~~  
8 ~~on an intermodal carrier” shall apply to the day or days in question~~  
9 ~~that an occurrence referenced in subdivision (b) took place.~~

10 (4) “*Intermodal marine equipment*” means equipment commonly  
11 used in the road transport of intermodal cargo by an intermodal  
12 motor carrier to or from an intermodal marine terminal, including  
13 trailers, chassis, containers, and associated devices, but excluding  
14 tractors.

15 (5) “Intermodal marine terminal” means a ~~marine~~ terminal  
16 location or facility that engages in discharging or receiving  
17 *intermodal marine* equipment owned, operated, or controlled by  
18 an *intermodal marine* equipment provider. *This definition does*  
19 *not apply to any railroad, warehouse, or any other domestic*  
20 *terminal facility that may handle intermodal marine equipment,*  
21 *but where cargo shipped by intermodal marine transport is not*  
22 *transferred to or from ocean-going vessels.*

23 (6) “Written or electronic notification” means any  
24 communication by postal letter, facsimile, electronic mail, or other  
25 electronic notification.

26 (7) “*Intermodal marine equipment provider*” means ~~any the~~  
27 ~~party authorizing delivery or receipt of physical possession of~~  
28 ~~equipment with a motor carrier commonly used in the road~~  
29 ~~transport of intermodal freight, including, but not limited to,~~  
30 ~~trailers, chassis, containers, and associated devices, but excluding,~~  
31 ~~tractors. This definition applies to all intermodal equipment~~  
32 ~~providers, regardless of whether the party participates in providing~~  
33 ~~*intermodal marine equipment to an intermodal motor carrier at*~~  
34 ~~*an intermodal marine terminal pursuant to the Uniform Intermodal*~~  
35 ~~*Interchange and Facilities Access Agreement or any other*~~  
36 ~~*interchange agreement.*~~

37 (8) “Cargo demurrage” means a charge including, but not  
38 limited to, any “wharf demurrage” applied against cargo that  
39 results from the storage of the cargo on an intermodal terminal

1 *beyond the end of the allowable free time as established by tariff*  
2 *or agreement.*

3 *SEC. 2. The amendment of subdivision (b) of Section 22928 of*  
4 *the Business and Professions Code made by Section 1 of this act*  
5 *does not constitute a change in, but is declaratory of, existing law*  
6 *relative to the prohibition on the imposition of per diem and*  
7 *retention charges by intermodal marine equipment providers in*  
8 *the instances identified therein.*

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